

HOUSE No. 2742

By Mr. Smizik of Brookline, petition of Frank I. Smizik and others for legislation to regulate the medical use of marijuana by patients approved by physicians and certified by the Department of Public Health. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Frank I. Smizik	Barbara A. L'Italien
Ruth B. Balser	Alice K. Wolf
Ellen Story	Joyce A. Spiliotis
Anne M. Paulsen	Deborah D. Blumer
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In the Year Two Thousand and Five.

AN ACT AMENDING THE COMMONWEALTH'S CURRENT LAW REGULATING THE PHYSICIAN-APPROVED USE OF MARIJUANA FOR MEDICAL PURPOSES BY DPH-CERTIFIED PATIENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 34 of Chapter 94C is amended in the
2 fourth paragraph by inserting after the words, "is a patient certi-
3 fied to participate in a therapeutic program described in ch. 94D,"
4 the words, ", or is a registered caregiver to a patient so certified as
5 defined in section 1 of chapter 94D," and further amended by
6 inserting after the words "and possessed the marijuana for," the
7 words "the certified patient's".

1 SECTION 2. Section 1 of Chapter 94D is amended by adding
2 the following new definitions:—
3 "Registered caregiver," a person at least 18 years old who has
4 agreed to undertake responsibility for assisting in the health care
5 of a patient with respect to the medical use of marijuana and who
6 registers and is approved for this purpose by the Department of

7 Public Health (which approval shall not be unreasonably withheld
8 by the agency).

9 “Personal medical use,” is an amount of marijuana that is not
10 more than is reasonably necessary to ensure the uninterrupted
11 availability of marijuana, for the purpose of alleviating the symp-
12 toms or effects of the certified patient’s medical condition for
13 which he or she has been certified to use marijuana, and shall be
14 presumed to be not more than four ounces of dried, useable,
15 cannabis, and no more than ten plants, four of which can be
16 mature (flowering).

1 SECTION 3. Section 2 of Chapter 94D is amended by adding
2 the following new paragraph:—

3 A physician shall not be subject to arrest or prosecution, penal-
4 ized in any manner, or denied any right or privilege for providing
5 written certification for the medical use of marijuana to patients
6 who qualify based on his or her clinical judgment.

1 SECTION 4. Section 2 of Chapter 94D is amended by striking
2 after the word “cancer” appearing in the first sentence of the
3 existing section, the words, “chemotherapy and radiation therapy,
4 in decreasing intraocular pressure in glaucoma patients, and in
5 decreasing airway resistance in asthmatics.” and, inserting in
6 place of the foregoing stricken words, the words, “and its treat-
7 ment, the condition or symptoms of glaucoma, asthma, positive
8 status for human immunodeficiency virus, acquired immune defi-
9 ciency syndrome or the treatment of the following conditions: A
10 chronic or debilitating disease or medical condition or its treat-
11 ment that produces one or more of the following: cachexia or
12 wasting syndrome; severe pain; severe nausea; seizures, including
13 those characteristic of epilepsy; or severe and persistent muscle
14 spasms, including those characteristic of multiple sclerosis or
15 Crohn’s disease; or any other medical condition or its treatment
16 approved by a patient’s doctor in the exercise of his or her profes-
17 sional judgment.

1 SECTION 5. Section 2 of Chapter 94D is amended by inserting
2 after the words “whom a physician has certified” in the second
3 paragraph, the words “on a form approved by the Department of

4 Public Health” and further amended, by striking the words, “the
5 following: that the patient is threatened by loss of life or sight, or
6 asthmatics who experience severe respiratory problems of discom-
7 fort; that the patient is not responding to or has incurred severe
8 side effects from the administration of conventional controlled
9 substances;” which follow the words “Public Health” inserted
10 above; and inserting in place of the foregoing stricken words, the
11 words, “that the use of marijuana may alleviate the symptoms or
12 effects of their medical condition as described in the preceding
13 paragraph;”

1 SECTION 6. Section 2 of Chapter 94D is amended by striking
2 in its entirety the third paragraph, and replacing the stricken para-
3 graph by inserting the following paragraph:—

4 “The Department shall contract with the national institute on
5 drug abuse, the national cancer institute or any other manufac-
6 turer, distributor or analytical laboratory for the receipt of ana-
7 lyzed marijuana for distribution to patients upon the written
8 certification of a physician. If the Department is unable to provide
9 physician certified patients with marijuana in a timely and effec-
10 tive manner from the foregoing sources (but not later than six
11 months after the effective date of this amendment), and prior to
12 the review and approval of any study protocol pursuant to the
13 therapeutic research program by an Institutional Review Board in
14 accordance with the provisions of 45 CFR part 46 and 21 CFR
15 part 56, those patients or their caregivers may participate in the
16 program by growing indoors in a locked facility or otherwise
17 obtaining marijuana for the patient’s own personal use in an
18 amount consistent with personal medical use, that is not more than
19 is reasonably necessary to ensure the uninterrupted availability of
20 marijuana for the purpose of alleviating the symptoms or effects
21 of the certified patient’s medical condition for which he or she has
22 been certified to use marijuana.”

1 SECTION 7. Section 3 of Chapter 94D is amended by inserting
2 after the words “The department shall approve participation in the
3 program” appearing in the second sentence of the existing section,
4 the words, “and issue identification cards to certified patients and
5 registered caregivers. Such approvals and issuance of cards shall

6 not be unreasonably withheld or delayed by the agency. A certi-
7 fied patient or registered caregiver who has in his or her posses-
8 sion an identification card issued by the agency shall not be
9 subject to arrest, prosecution or other penalty for the cultivation,
10 possession or use of marijuana, provided the quantity of marijuana
11 in the certified patient or registered caregiver's possession does
12 not exceed the "reasonably necessary" amount for personal med-
13 ical use described in section 1 of chapter 94D."

1 SECTION 8. Section 32C of Chapter 94C is amended by
2 adding the following new paragraph:—

3 "(c) It shall be a prima facie defense to any charge under this
4 section that the defendant is a patient certified to participate in a
5 therapeutic research program described in Chapter 94D, or is a
6 registered caregiver to a patient so certified, and possessed the
7 marijuana for the certified patient's personal use pursuant to such
8 program."